IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

FRIDAY THE THIRTIETH DAY OF JULY
TWO THOUSAND AND FOUR
: PRESENT:
THE HON'BLE MR. JUSTICE: **BILAL NAZKI**
CIVIL REVISION PETITION No. 971 OF 2004

(Petition under Article 227 of the Constitution of India to revise the order of the Court of the X Junior Civil Judge, City Civil Court, Hyderabad and passed in I.A. No. 2019 of 2002 in O.S. No. 3392 of 2002 dated: 05-01-2004)

Between:

M/s. Kotak Mahindra Primus Ltd., Office at 4th floor, Minerva Complex, S.D. Road, Secunderabad, rep. by its Senior Officer Mr. D.S. Vikram Kumar.

…..Petitioner

AND

S. Laxman Rao, S/o. S. Hanumanth Rao, Occ: Business, R/o. 6-1-535, Khairatabad, Hyderabad

……..Respondent

The petition coming on for hearing, upon perusing the petition and memo of grounds filed herein and and upon hearing the arguments of Mr. S. Niranjan Reddy, Advocate for the Petitioner and of Mr. Ashfaq Ahmed, Advocate for the Respondent, the Court made the following

ORDER:

"Admit.

During the course of hearing of this petition, I have come across with the agreement by which the loan was advanced under Provision 14.1 (ii) in which it is stated.

"Demand that the Borrower return the Product to the Lenders at the risk and expense of the Borrower. In the same condition was delivered to it (ordinary wear and tear excepted) at such location as the Lender may designate and upon failure of the Borrower to do so within the period of demand, as agents and constituted attorney of the Borrower enter upon premises where the Product is located and take immediate possession of and remove the same without liability to the Lenders or their agents or such entry or for damage to property or otherwise. Upon such return of the Product or upon the Lender taking possession of the Product as herein before stated, the Loan herein granted by the Lender to the Borrower shall stand cancelled and provided however, the remedies available to the Lender as herein given shall survive such cancellation of Loan and the Lender shall be entitled and authorized to exercise its right herein including in connection with the Product to recover its dues under this agreement".

Whether this condition in the agreement is legal and in accordance with public policy, would be an important question to be decided in this petition as basically the seizure power is a Police Power which is prima facie available only to the State.

Let a notice be issued to Advocate General also to assist this Court as Amicus Curae as of and on vehicles are being seized by financiers prima facie without any authority of law.

List after two weeks".

ASSISTANT REGISTRAR

//TRUE COPY //

for ASSISTANT REGISTRAR

To

1. The X Junior Civil Judge, City Civil Court, Hyderabad.
2. S. Laxman Rao, S/o. S. Hanumanth Rao, Occ: Business, R/o. 6-1-535, Khairatabad, Hyderabad.
3. The Advocate General, High Court of A.P., Hyderabad. **(BY SPECIAL MESSENGER with a copy of petition and memo of grounds and material papers if any)**
4. One spare copy.

Ksv

HIGH COURT

Ksv
Date of drafting: 03-08-2004

BNJ

DATE: 30-07-2004

NOTE: LIST AFTER TWO WEEKS

ORDER

C.R.P. No. 971 OF 2004

DIRECTION